

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 27866-2-III
)	
Respondent,)	
)	
v.)	Division Three
)	
D.A.C.,)	
)	
Appellant.)	UNPUBLISHED OPINION

Korsmo, J. — D.A.C. challenges his Grant County Juvenile Court conviction for second degree assault, contending that the toilet tank lid he threw at detention monitors did not constitute a deadly weapon. The instrument was used in a manner that threatened substantial bodily injury. We affirm.

FACTS

D.A.C. was incarcerated at the Grant County Youth Services Detention Facility on December 6, 2008. About 7:00 p.m. he came out of the shower and entered the day room, where he put on deodorant and lotion. Detention monitor Scott Stokoe was in the

day room. Monitors Rick Graser and Maria Arreola were in the control room monitoring the day room. D.A.C. asked to go to the bathroom and was told to use the facility in his cell. He then asked and received permission to get a drink of water.

As he was walking to get the drink, he spotted Mr. Graser watching him and stated “what the f*** are you looking at?” He used several more expletives. Mr. Stokoe told D.A.C. to stop cussing, get his drink, and go back to his room. Graser came out of the control room and stood near Stokoe. D.A.C. ran past the water fountain back into the boy’s bathroom.

He came out with the porcelain lid from the toilet’s water tank. He was still angry and spouting profanities. D.A.C. told the monitors to stay away or he would hit them with the lid. He was about 15 feet away from the two men when he twisted his body like a discus-thrower and flung the tank lid at them. The lid flew at the speed of “a good fast ball” right at Mr. Grasser’s stomach. He deflected it with his hand into the wall where the lid shattered and left an “appreciable dent.” Clerk’s Papers (CP) 25.

D.A.C. was charged with second degree assault by use of a deadly weapon and gross misdemeanor third degree malicious mischief. At trial, the toilet tank lid from the girl’s bathroom was introduced as an illustrative exhibit. It weighed seven pounds.

The trial court found D.A.C. guilty of second degree assault as charged, and also

determined that he had committed the lesser degree offense of misdemeanor third degree malicious mischief. D.A.C. was committed for a standard range sentence of 80-100 weeks. He then appealed to this court.

ANALYSIS

The sole issue presented by this appeal is whether the toilet tank lid constituted a deadly weapon for purposes of the assault statute. We believe the evidence permitted the trier-of-fact to make that determination.

Sufficiency of the evidence challenges are reviewed to see if there was evidence from which the trier-of-fact could find each element of the offense proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); *State v. Green*, 94 Wn.2d 216, 221-222, 616 P.2d 628 (1980). The reviewing court will consider the evidence in a light most favorable to the prosecution. *Id.*

As charged here, a person commits second degree assault when he or she intentionally “assaults another with a deadly weapon.” RCW 9A.36.021(1)(c). D.A.C. argues that the State failed to prove beyond a reasonable doubt that the toilet tank lid was a deadly weapon. A “deadly weapon” includes any other weapon, device, instrument, article, or substance, . . . which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.

RCW 9A.04.110(6) (partial).

“Substantial bodily harm” is defined as

bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.

RCW 9A.04.110(4)(b).

The trial court found that the toilet lid, as used, was “readily capable of” causing either “substantial disfigurement or impairment of a body part.” CP 26. We agree that the evidence permitted that determination.

The lid weighed seven pounds and was thrown at a fast rate of speed over the comparably short distance of 15 feet directly at the stomach of Mr. Graser. When deflected it shattered on the wall. If the lid had struck Mr. Graser in the stomach, it is not hard to imagine that injury to internal organs could have resulted.

Smaller objects thrown far greater distances have caused significant injuries to people struck by them. The delivery style used in this case suggests discus injuries might be informative. Many people struck in the head by a discus¹ have suffered severe head injuries. *E.g., Lanning By and Through Lanning v. Anderson*, 22 Kan. App. 2d 474, 921 P.2d 813 (1996) (discus thrown 80-90 feet caused various cognitive defects); *Yancey v.*

¹ A discus used in track and field competition can weigh up to 4.5 pounds. Webster’s Third New International dictionary 648 (1993).

Superior Court, 28 Cal. App. 4th 558, 33 Cal. Rptr. 2d 777 (1994) (discus caused physical and mental injuries); *Central Mut. Ins. Co. v. Dunker*, 799 S.W.2d 334 (Tex. App. 1990) (13-year-old suffered permanent brain damage); *Marques v. Riverside Military Academy, Inc.*, 87 Ga. App. 370, 371, 73 S.E.2d 574, 576 (1952) (four-pound discus caused severe head injuries).

Common sense, and these case examples, suggests that the trial court rightly determined that the toilet tank lid was quite capable of causing significant disfigurement or impairment of a body organ if it had struck Mr. Graser in the stomach. Unlike the cited examples where a smaller object caused severe injuries at a significant distance, here the heavy object was thrown at high velocity over a short distance with enough force that it shattered upon hitting the wall. If direct contact had been made, significant injury could have followed. As used here, the lid was a deadly weapon.

The conviction is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, J.

WE CONCUR:

No. 27866-2-III
State v. D.A.C.

Kulik, C.J.

Brown, J.